No. 82-1494

In The

Supreme Court of the United States

October Term, 1982

JOHN W. SURGENT,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Whether the evidence presented in the trial court was sufficient evidence to sustain petitioner's conviction for mail fraud in violation of 18 U.S.C. §1341 as charged in Count Thirteen of the indictment.

2. Whether the evidence presented in the trial court was sufficient to sustain petitioner's conviction for subornation of perjury in violation of 18 U.S.C. §1622 as charged in Count Sixteen of the indictment.

3. Whether the trial court's instructions to the jury as to Counts Two through Seven were so erroneous and defective that a reversal of petitioner's conviction as to these charges is warranted in that the court failed to charge on either the government's need to prove knowledge of the illegality of the sale, or knowledge as to the non-registration.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit was not reported (*see* Appendix, *infra* at p. 1a). The opinion of the United States District Court, Southern District of New York was not reported (Appendix, *infra* at 5a).

JURISDICTION

The judgment of the court below (Appendix, *infra* at 1a) was entered on January 4, 1983. Rehearing was not sought. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

1. The statute under which petitioner was prosecuted under Count Thirteen was Title 18 U.S.C. §1341 which provided as follows:

> **§1341. Frauds and swindles**
>
> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

2. The statute under which petitioner was prosecuted under Count Sixteen was Title 18 U.S.C. §1622 which provided as follows:

§1622. Subornation of perjury

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than $2,000 or imprisoned not more than five years, or both.

3. The statute under which petitioner was prosecuted under Counts Two through Seven was Title 15 U.S.C. §77e which provided as follows:

§77e. Prohibitions relating to interstate commerce and the mails

(a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) It shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration statement has been filed under this subchapter, unless such prospectus meets the requirements of section 77j of this title; or

(2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 77j of this title.

(c) It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 77h of this title.

STATEMENT OF THE CASE

Petitioner was convicted in the United States District Court, Southern District of New York, on June 9, 1982 before the Honorable Thomas P. Griesa under forteen counts of a sixteen count indictment. Petitioner was charged with conspiracy in violation of 18 U.S.C. §371, sale of unregistered securities in violation of 15 U.S.C. §§77e and 77x; securities fraud in violation of 15 U.S.C. §§78j(b) and 78ff; mail fraud in violation of 18 U.S.C. §1341; wire fraud in violation of 18 U.S.C. §1343; and subornation of perjury in violation of 18 U.S.C. §1622.

The indictment arose out of petitioner's alleged illegal activities as a director and corporate officer of World Gambling Corp. between April 1979 and November 1981. The petitioner was convicted and thereafter sentenced to serve ten years in prison.

REASONS FOR GRANTING THE WRIT

The affirmance by the United States Court of Appeals has, in effect, sanctioned the departure from the accepted and usual course of judicial proceedings with respect to the weight of the evidence and the defective and improper charges to the jury given by the trial court which led to the petitioner's conviction.

A. With respect to Count Thirteen, there was not sufficient evidence adduced by the government to permit a jury to determine that the mailing in question was made "for the purpose of executing a scheme to defraud", as required by the mail fraud statute.

Judicial authority has decreed that mailings are made in execution of a scheme to defraud if they are "sufficiently closely related" to the scheme, *United States v. Maze*, 414 U.S. 395, 399, 94 S. Ct. 645 (1974), or "incident to an essential part of

the scheme." *Pereira v. United States,* 347 U.S. 1, 8, 74 S. Ct. 358, 362 (1954). Moreover, as the Fifth Circuit stated in *United States v. LaFerriere,* 546 F. 2d 182 (5th Cir. 1977):

> . . . the close relation of the mailings to the scheme does not turn on time or space, but on the dependence in some way of the completion of the scheme or the prevention of its detection on the mailings in question.

Thus, mailings taking place after the object of the scheme has been accomplished, *United States v. Maze, supra,* or before its accomplishment has begun, *United States v. Beall,* 126 F. Supp. 363 (N.D. Cal. 1954), are not sufficiently closely related to the scheme to support a mail fraud conviction.

When these principles are applied to the facts in the case at bar, as those facts appear from the evidence viewed in a light most favorable to the government, *Glasser v. United States,* 315 U.S. 60, 62 S. Ct. 452 (1942), it is clear that the document which served as the basis for petitioner's conviction under Count Thirteen was not mailed in execution of a scheme to defraud. According to the government's proofs, the fraudulent scheme alleged to have been executed in Count Thirteen involved the sale of World Gambling stock through petitioner's nominee, David Traxler, in violation of the Securities Act of 1934. Indeed, in his instructions to the jury, the trial judge adverted to the scheme in Count Thirteen as one "involving the use (of) Traxler as a front or device to avoid the registration requirements of federal law." Admittedly, there is sufficient evidence in the record to support a finding that such a scheme existed and that the petitioner participated in it. The record, however, is barren of any evidence which demonstrates that the scheme was promoted, enhanced or executed by the Shearson Loeb Rhodes account statement allegedly mailed to David Traxler on December 31, 1979.

As indicated by the trial testimony of James Hamlisch, former account executive for Shearson Loeb Rhodes, the account statement in question purports to document sales of World Gambling stock for the account of David Traxler during the period November 24, 1979 to December 31, 1979. The statement reflects a sale of 1,000 shares on November 27, 1979, a sale of 11,000 shares on November 30, 1979, and a sale of 8,000 shares on December 5, 1979. In this regard, the mailing of the account statement was no more than a routine business procedure which served to acknowledge the sales of stock in the Traxler account. The mailing itself was innocuous, served no purpose in petitioner's alleged fraudulent scheme to sell unregistered securities, and was not connected in any with with collection of proceeds from the scheme. Indeed, the scheme itself had effectively ended on December 5, 1979, when the petitioner allegedly made the final sale of World Gambling stock in Traxler's name. It is clear, therefore, that the account statement was not "sufficiently closely related" to the scheme to bring it within the meaning and intendment of the mail fraud statute, and petitioner's conviction under Court Thirteen must be reversed.

On point is *Kann v. United States,* 323 U.S. 88, 65 S. Ct. 148 (1944), in which corporate officers were accused of having set up a dummy corporation through which to divert profits of their own corporation for their own use. As a part of the scheme, the defendants were charged with having fraudulently obtained checks payable to them which were cashed or deposited at a bank and then mailed for collection to the drawee bank. The Supreme Court vacated the defendants' convictions for mail fraud, ruling that the fraudulent scheme had been completed at the point that the checks were cashed:

> The scheme in each case had reached fruition. The persons intended to receive the money had received it irrevocably. It was immaterial to them, or to

> any consummation of the scheme, how the bank which paid or credited the check would collect from the drawee bank. It cannot be said that the mailings in question were for the purpose of executing the scheme, as the statute requires.

323 U.S. at 94. Similarly, in the present case, petitioner's alleged fraudulent scheme to sell unregistered securities reached fruition when the final sale of World Gambling stock was completed on December 5, 1979. As a result, the account statement which was mailed to Traxler on December 31, 1979, had absolutely nothing to do with execution or consummation of the scheme.

In *Parr v. United States,* 363 U.S. 370, 80 S. Ct. 1171 (1959), defendants were charged with having obtained gasoline and other filling station products and services for themselves by the unauthorized use of a gasoline credit card issued to the school district which employed them. The mailings complained of were two invoices which confirmed the fraudulent purchases and which were mailed by the oil companies involved to the school district for payment. Relying on *Kann,* the Supreme Court held that the mailing of invoices could not have been made in execution of the fraudulent scheme, where the scheme had reached fruition when the products and services were received.

In *United States v. Tarnopol,* 561 F. 2d 466 (3rd Cir. 1977), officers of recording companies were accused of using mail and wire communications to defraud artists and publishers of their royalties by keeping certain record sales off the books. The mailings relied upon by the government in support of the mail fraud counts were packing slips listing the records shipped. The packing slips were sent by one co-defendant to another and used by the latter as a convenient means of distinguishing those sales to be placed on the books from those to be included in the fraudulent scheme. The Third Circuit reversed the defendants' mail fraud convictions on the grounds that the mailing of the

packing slips was a routine business procedure which was uniformly followed in the case of all sales, whether or not they were a part of the scheme to defraud. As a result, the court concluded that the mailings were not made in execution of a fraudulent scheme. Similarly herein, the mailing of the Shearson Loeb Rhodes account statement alleged in Count Thirteen was a routine business procedure which was entirely unrelated to the alleged fraudulent scheme of selling unregistered stock. *See also, United States v. Maze, supra; United States v. Staszcuk,* 502 F. 2d 875 (7th Cir. 1974), *modified on other grounds,* 517 F. 2d 53 (7th Cir. 1974), *cert. denied,* 423 U.S. 837 (1975).

The foregoing facts and case authority made it inexorably clear that there was not sufficient evidence in the record below to sustain a finding that the mailing alleged in Count Thirteen was made in execution of any scheme to defraud by the petitioner.

B. With respect to Count Sixteen, there was not sufficient evidence adduced by the government to permit a jury to find petitioner guilty of suborning perjury beyond a reasonable doubt. It is well-established that an essential element of the offense of suborning perjury is that the defendant wilfully and knowingly procured or instigated the witness to give false testimony under oath. *Petite v. United States,* 262 F. 2d 788 (4th Cir. 1959), *reversed on other grounds,* 361 U.S. 529. Count Sixteen of the indictment charged the petitioner with wilfully and knowingly procuring Harry Poole to commit perjury before an S.E.C. investigative proceeding. (The indictment also charged the petitioner with procuring David Traxler to so falsely testify, but the trial court's instructions on Count Sixteen made no reference to Traxler). It therefore was incumbent upon the government to prove beyond a reasonable doubt that the petitioner knowingly and wilfully procured Harry Poole to testify falsely before the S.E.C. proceeding. This it completely failed to do.

A review of the trial transcripts reveals that the basis for the subornation charge arose out of events alleged to have occurred during two meetings in defendant's Clifton, New Jersey office shortly before the S.E.C. proceeding. According to the testimony of Harry Poole, the witness whose perjury was alleged to have been suborned, the first meeting involved a discussion between Poole, Mark Sroka, and the petitioner about the S.E.C. proceeding. At this meeting, Poole testified that he informed the petitioner that the S.E.C. would probably "want to know why David Traxler received 75,000 shares of free and tradeable stock in World Gambling Corp. . . . ." According to Poole, the petitioner's response to him was, "just tell (the S.E.C.) that he was a finder". Poole then explained to the petitioner and Mark Sroka that the S.E.C. might be interested to know how he had come to meet Traxler. In response to this, according to Poole's testimony:

> . . . *it was Mr. Sroka, not Mr. Surgent,* that, "Just tell them that you met him at the bar at the Newark Train Station, and through the conversation you had with him at the bar, he said he had some friends who were interested in acquiring some businesses, and it might be advantageous if I contact Mr. Sroka relative to this matter". . . .

Poole testified that he thereafter explained to Sroka that he was not in the habit of frequenting the bar at the Newark Train Station, to which Sroka replied, "Tell them you met him on the train".

At the second meeting, which allegedly occurred on or about April 24, 1980, Poole testified that when he got to the meeting, a discussion ensued as to "who would be the best person to go in front of the S.E.C. first, whether Mr. Traxler should go . . . or I should go. . . ." According to Poole, the only other thing discussed at the second meeting was "the concocted story as to

how . . . I met Mr. Surgent through Mr. Traxler, and why . . . he was going to act as a finder". The trial transcripts then reveal the following colloquy between Poole and the Prosecutor:

> PROSECUTOR: Did there come a time when you went to the Securities & Exchange Commission?
>
> POOLE: Yes.
>
> PROSECUTOR: Approximately how long after the meeting you just told us about?
>
> POOLE: Approximately four days.
>
> PROSECUTOR: When you went to the Securities & Exchange Commission, were you asked whether David Traxler — were you asked about David Traxler?
>
> POOLE: Yes, I was.
>
> PROSECUTOR: What did you tell the Securities & Exchange Commission?
>
> POOLE: That I knew David Taxler and I told them that Mr. Traxler introduced me to — was the reason how I met Mr. Surgent.
>
> PROSECUTOR: And that was not true?
>
> POOLE: That is correct.

In view of the foregoing testimony, it is inexorably clear that there was an insufficiency of evidence upon which to base

defendant's conviction for subornation of perjury. To begin with, the only false statement which Poole admitted making to the S.E.C. was that "I knew David Traxler and . . . (he) was the reason how I met Mr. Surgent". The record is barren of any evidence to suggest that this false statement was instigated or procured by the petitioner John Surgent. To the contrary, Poole himself testified that "it was Mr. Sroka, not Mr. Surgent", who suggested the fabricated story as to how Poole met Traxler on the train. This statement was repeated by Poole during his cross-examination, as follows:

> Q. The truth-with respect to this concocted story that you talked about, this meeting Traxler on the train, that is what you are telling this jury today was a fabricated story?
>
> Poole: That is correct. It did not happen.
>
> Q. The fact is, is it not, that it was Mr. Sroka who suggested that story to you?
>
> Poole: That is correct.

Indeed, according to Poole's testimony, the only statement made by the petitioner to Poole respecting Poole's impending S.E.C. testimony occurred during the first meeting at the petitioner's office, where the petitioner advised Poole to, "Just tell (the S.E.C.) that he (Traxler) was a finder". There was nothing in the record to indicate, however, that Poole recited this false statement before the S.E.C. Because the actual commission of perjury is an essential element of the offense of subornation of perjury, *Meyers v. United States,* 171 F. 2d 800 (D.C. 1949), such a statement cannot be the basis of petitioner's conviction under Count Sixteen.

It should also be noted that the government attempted to corroborate Poole's testimony in its direct examination of Martin Hauptman, an attorney who testified to being present at the second meeting in petitioner's office. Although Hauptman's testimony alluded to the fabricated story about Poole meeting Traxler on the train, nothing in his testimony even suggested that it was the petitioner who procured Poole to recite the story before the Securities & Exchange Commission.

In summary, there is not sufficient evidence in the record to establish beyond a reasonable doubt that the petitioner procured Harry Poole to suborn perjury.

C. With respect to Counts Two through Seven, petitioner contends that the court's instructions to the jury were erroneous because they warranted a verdict of guilty regardless of petitioner's knowledge of the fact that the stock in question was not registered. It is well-established that in criminal prosecutions for violations under Section 5 of the Securities Act of 1933, it is not necessary to prove specific intent to violate the law. *Kistner v. United States,* 332 F. 2d 978 (8th Cir. 1964).

Despite the absence of scienter as an essential element of a Section 5 violation, however, it remains well-settled that there must at least be a finding that the defendant had *knowledge* that the securities in question were unregistered at the time of sale. *United States v. Dardi,* 330 F. 2d 316, 325 (2nd Cir. 1964), *cert. denied,* 379 U.S. 845, 85 S. Ct. 50 (1965); *United States v. Hill,* 298 F. Supp. 1221 (D.C. Conn. 1969); *United States v. Benjamin,* 328 F. 2d 854, 861-63 (2nd Cir. 1963), *cert. denied,* 377 U.S. 953 (1964). As was succinctly stated by the Second Circuit in *United States v. Rubinson,* 543 F. 2d 951 (2nd Cir. 1976):

> In order to establish the essential elements of knowledge and wilfullness (under a Section 5 prosecution), the government is required to prove

> either that the appellants knew, or that they deliberately closed their eyes to, the necessity for registering the. . .stock before selling it.

543 F. 2d at 959. Indeed in the case at bar, Counts Two through Seven of the indictment explicitly charge the petitioner with having "unlawfully, wilfully *and knowingly*" committing the acts proscribed by §77e.

In view of the fact that knowledge of non-registration is an essential element of a §77e violation, petitioner was entitled to a jury instruction that the government was required to prove such knowledge in order to obtain a conviction under Counts Two through Seven. *United States v. Massiah,* 307 F. 2d 62 (2nd Cir. 1962). A review of the trial court's instructions on these counts, however, reveals that no such instruction was ever given. Admittedly, the trial court did charge the jury that the government must prove that the petitioner "wilfully caused (the sale of stok) knowing that the sale was for his benefit." The instructions, however, failed to make any reference to the government's burden of demonstrating that the petitioner had knowledge, or should have had knowledge, that the securities involved were unregistered.

In *United States v. Dardi, supra,* the defendant appealed his conviction under §77e on the grounds that the trial court's instructions on the issue of guilty knowledge were erroneous. The Second Circuit in its opinion recognized that:

> There is some dispute whether knowledge of the illegality of sale need be shown to satisfy the "wilfulness" requirement of the Securities Act if the seller knew that the stock was control stock and that it was not registered.

330 F. 2d at 331. The Second Circuit went on to hold, however, that since the trial court's charge was adequate on either view,

defendant's conviction should be affirmed. In the case at bar, the trial court neglected to charge on *either* the government's need to prove knowledge of the illegality of the sale, or knowledge of the non-registration of the securities. Such failure to charge on an essential element of the offense was plain error which requires reversal of the judgment of convictions against petitioner under Counts Two through Seven. *Screws v. United States,* 325 U.S. 91 (1945); *United States v. Alsondo,* 486 F. 2d 1339 (2nd Cir. 1973).

CONCLUSION

In light of the foregoing deficiencies, it seems clear that the United States Court of Appeals for the Second Circuit has sanctioned the unique and salutory departure by the trial court from decisions of this Court and traditional notions of due process and this petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

FRANK J. PASSARELLA
Attorney for Petitioner

APPENDIX

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the fourth day of January, one thousand nine hundred and eighty-three.

Present:

HONORABLE WILLIAM H. TIMBERS,
HONORABLE JON O. NEWMAN,
HONORABLE LAWRENCE W. PIERCE,
Circuit Judges.

82-1206

Filed Jan. 4, 1983

UNITED STATES OF AMERICA,

Appellee,

v.

JOHN W. SURGENT, JR.,

Defendant-Appellant.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise found in unrelated cases before this or any other court.

Opinion

John W. Surgent, Jr. appeals from a judgment of conviction entered upon a jury verdict in the United States District Court for the Southern District of New York (Thomas P. Griesa, Judge). Appellant was charged with one count of conspiracy, six counts of selling unregistered securities, three counts of securities fraud, four counts of mail and wire fraud, and one count of subornation of perjury. 15 U.S.C. §§77(e), 77(x), 78j(b), and 78j(ff); 18 U.S.C. §§371, 1341, 1343, 1622, and 2. Appellant was found guilty on all counts and was sentenced to a total of ten years of imprisonment.

Appellant was a "control person" of World Gambling, Inc. After appellant disseminated false rumors regarding the prospects of that corporation, thereby inflating its over-the-counter price from $0.25 per share to $3.50 per share, 78,167 shares were sold through four brokerage accounts maintained in the name of David Traxler. The jury was entitled to find that the shares held in Traxler's name were in fact owned by appellant, and that Traxler was used as a nominee owner in order to allow appellant to avoid the SEC filing requirement that are triggered where a "control person" trades in the stock of his own corporation. At trial, appellant did not contend that he was unaware that no filing had been made for the stock that was sold. Instead, his principal defense was that the stock was owned by Traxler in substance as well as form, and therefore that appellant could not be found liable in connection with the sale of the unregistered shares.

Appellant's new counsel has advised that several of the points raised in appellant's initial brief have been abandoned. Those that remain and those advanced and elaborated by new counsel are also without merit.

1. Appellant contends that the evidence did not permit a reasonable jury to find beyond a reasonable doubt that he was

the real owner of the shares listed in Traxler's name. As elaborated at oral argument, this is not a claim that evidence from which appellant's ownership was inferable was not presented; such an argument would be totally unavailing. Instead, the claim is that it would have been reasonable for the jury to infer from the evidence that appellant was not the owner. This argument totally misconceives the Government's burden of proof under United States v. Taylor, 464 F.2d 240 (2d Cir. 1972). The proof need not be inconsistent with all plausible inferences of innocence; it must suffice to permit a reasonable jury to be persuaded beyond a reasonable doubt that the inference of guilt is the correct inference to be drawn. The evidence here was overwhelming, including the evidence of Surgent's efforts to have Traxler tell a false story to the Securities and Exchange Commission concerning acquisition of the stock.

2. The charge on the mail and wire fraud counts is challenged for lack of sufficient language indicating that the mailings and wire communications must be in furtherance of the fraud. The language used in the initial charge drew no objection, and the supplemental charge focused the jury's attention sufficiently by stating the question to be whether the wire communication "was sent as a part of a fraudulent scheme." *See Kann v. United States*, 323 U.S. 38, 95 (1944).

3. Appellant also contends that there was insufficient evidence that he induced Harry Poole, a business broker, to lie to the SEC concerning Traxler's acquisition of the stock (Count 16). In response to the question, "What did Mr. Surgent say to you?", Poole answered ". . . it was said to me that, you know, 'Just tell him that he was a finder.' " Appellant suggests that the use of the passive voice renders the offeror of the instruction "unidentified" (Supplemental brief, p. 13). On the contrary, the jury was entitled to conclude that Poole was referring to Surgent,

especially when a few questions later, he was careful to attribute to another person a different bit of instruction given to him concerning how he should claim he met Traxler. The evidence abundantly established Surgent's active role in orchestrating Poole's false testimony to the SEC.

Appellant's remaining claims are without merit. The judgment of conviction is affirmed. The mandate shall issue forthwith.

s/ W.N. Timbers
s/ J.O. Newmar
s/ L.W. Pierce
Circuit Judges.

JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Docket No. 81 Cr 00773-1

DEFENDANT:
John W. Surgent, Jr.

In the presence of the attorney for the government, Pamela Chepiga AUSA, the defendant appeared in person on this date — June 9, 1982.

COUNSEL:
Patrick T. Burke, Esq.

PLEA:
There being a verdict of guilty.

FINDING & JUDGMENT:
Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly devising a scheme to buy and sell through the mails and interstate commerce common stock by making untrue statements of material facts so that monies could be fraudulently received and conspiring to do so, and procuring others to commit perjury as charged in counts 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 15 and 16.

15 U.S.C. §77e, 77x, 78j(b) and 78ff
17 C.F.R. §240, 10b-5
18 U.S.C. §1341, 1343, 371, 1622 and 2

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and

Judgment

ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SEE ADDENDUM A

SENTENCE OR PROBATION ORDER:
Defendant continued on bail pending appeal.

s/ Thomas P. Griesa
USDJ
June 9, 1982

Microfilm
June 15, 1982

Filed June 9, 1982

Judgment

UNITED STATES OF AMERICA v. JOHN W. SURGENT, JR.
(81 Cr. 0773)

Addendum A

(1) Counts 1 and 16	Consecutive sentences of 5 years each
(2) (a) Counts 2, 3 and 4	Concurrent sentences of 5 years each
(b) Counts 5, 6 and 7	Concurrent sentences of 5 years each

The 5 year sentences in each of Groups (a) and (b) are to be served consecutively, totalling 10 years.

(3) (a) Counts 9 and 10	Concurrent sentences of 5 years each
(b) Count 11	Sentence of 5 years

The 5 year sentences in Group (a) and in (b) are to be served consecutively, totalling 10 years.

(4) (a) Count 12	Sentence of 5 years
(b) Counts 13 and 15	Concurrent sentences of 5 years each

The 5 year sentences in (a) and in Group (b) are to be served consecutively, totalling 10 years.

Judgment

The 10 year sentences in each of the four groups numbered (1), (2), (3) and (4) are to be served concurrently with each other.

s/ Thomas P. Griesa
USDJ
June 9, 1982

Microfilm
June 15, 1982

Filed June 9, 1982